HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.782 OF 2006

Between:

Kotapati Audiseshanaidu and others

. . .Appellants

AND

The Secretary to Government and others

. . .Respondents

Counsel for the appellants : Shri M.Subramanyam

Counsel for the respondents : Government Pleader for Land Acquisition

Dated: 27th July, 2006

: JUDGMENT :

PER G.S.SINGHVI, CJ

Feeling dissatisfied with order dated 16.06.2006 passed by the learned Single Judge in Writ Petition No.27923 of 2005 whereby he declined to entertain the appellants prayer for quashing G.O.Rt.No.335, Irrigation and CAD (Projects Wing-LA-II) department, dated 30.03.2005 on the ground that an effective alternative remedy is available to the writ petitioners, the latter have filed this appeal under clause 15 of Letters Patent.

Shri M.Subramanyam, learned counsel for the appellants submitted that the order under challenge is liable to be set aside because the rule of alternative remedy, which is a rule of self-imposed restraint does not operate as an impediment to the entertaining of the writ petition filed with the complaint of violation of rules of natural justice. He further submitted that the learned Single Judge should not have non-suited the appellants, who are villagers and who have been deprived of their legitimate right to receive compensation for the last almost three decades, in lieu of acquisition of their land. Shri Subramanyam heavily relied on the judgment of Larger Bench of this Court in **Bhimidipati Annapoorna Bhavani v. Land Acquisition Officer, Yeleru Reservoir Project**[1] and argued that the case of the appellants fall within the ambit of well recognized exceptions to the rule of alternative remedy.

We have given serious thought to the arguments of the learned counsel and perused the record.

Article 226 of the Constitution, which empowers the High Court

to issue orders, directions or writs including the writs of mandamus, prohibition, certiorari, habeas corpus and
quo-warranto does not contain any limitation on the exercise of that power. However, in last 56 years, the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court will not issue writ, order or direction, if an effective alternative remedy is available to the petitioner.

In **A.V. Venkateshwaran v. R.S. Wadhwani**[2] the Constitutional Bench of the Supreme Court while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> "The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible

rules which should be applied with rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[3], another Constitutional Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

> "The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[4] the Supreme Court reiterated the rule of alternative remedy in the following words:

"When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships of the Supreme Court then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[14] the Supreme Court

applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia** (supra) the Supreme Court considered the situations in which the High Court can exercise under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1)}.** The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

We shall now consider whether the case of the appellants fall in any of the identified exceptions to the rule of alternative remedy.

We may have differed with the learned Single Judge and entertained the grievance made by the appellants because they belong to the rural part of the country and have been deprived of their legitimate right to receive compensation vide G.O.Rt.No.335, Irrigation and CAD (Projects Wing-LA-II) Department, dated 30.3.2005, without being put to notice, but in the peculiar facts of the case, we find it extremely difficult to adjudicate on the issues of fact which can appropriately be decided by giving opportunity to the parties to lead evidence. Each of the writ petitioners (appellants herein) has a particular share in the land acquired by the State Government. Each one of them is entitled to receive a particular amount of compensation

in respect of the land, crops etc. The individual claims of the appellants can be properly adjudicated in the execution proceedings. This Court does not have any specialized mechanism available under which we can decide the contentious issues. Therefore, notwithstanding the persuasive submission of Shri Subramanyam that the Court should come to the rescue of have nots of the society, we are unable to entertain the claim of the appellants.

With the above observations, the Writ Appeal is dismissed.

However, in order to ensure that the claim of the appellants is not frustrated by sheer delay, we direct that the execution petitions filed by them must be dealt with and decided by the Court concerned within a maximum period of four months of filing thereof.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 27.07.2006

kvni

---

[1] 2005(3) ALD 233
[2] AIR 1961 SC 1506
[3] AIR 1964 SC 1419
[4] AIR 1969 SC 556
[5] AIR 1970 SC 645
[6] AIR 1970 SC 1980
[7] (1972) 4 SCC 379
[8] (1975) 4 SCC 378
[9] AIR 1988 SC 66
[10] (1999) 4 SCC 43
[11] (2001) 6 SCC 634
[12] (2002) 1 SCC 216

[13] (2003)2 SCC 107

[14] (2004) 3 SCC 553